

An abstract painting with vibrant colors including red, orange, yellow, green, and blue, featuring thick, textured brushstrokes.

# **Deliverability of Supply Considerations for Imports of LNG through Canada or Mexico**

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## Energy Law Group

- Bennett Jones LLP has been an integral part of the development of the Canadian energy and natural resources landscape for almost 100 years and enjoys national and international standing as Canada's leading energy law firm.
- Bennett Jones is the only Canadian law firm ever included in the *Petroleum Economist* rankings of top law firms with the best knowledge of international energy law.
- Bennett Jones LLP has had extensive involvement in all aspects of Canadian LNG development over the past thirty years.

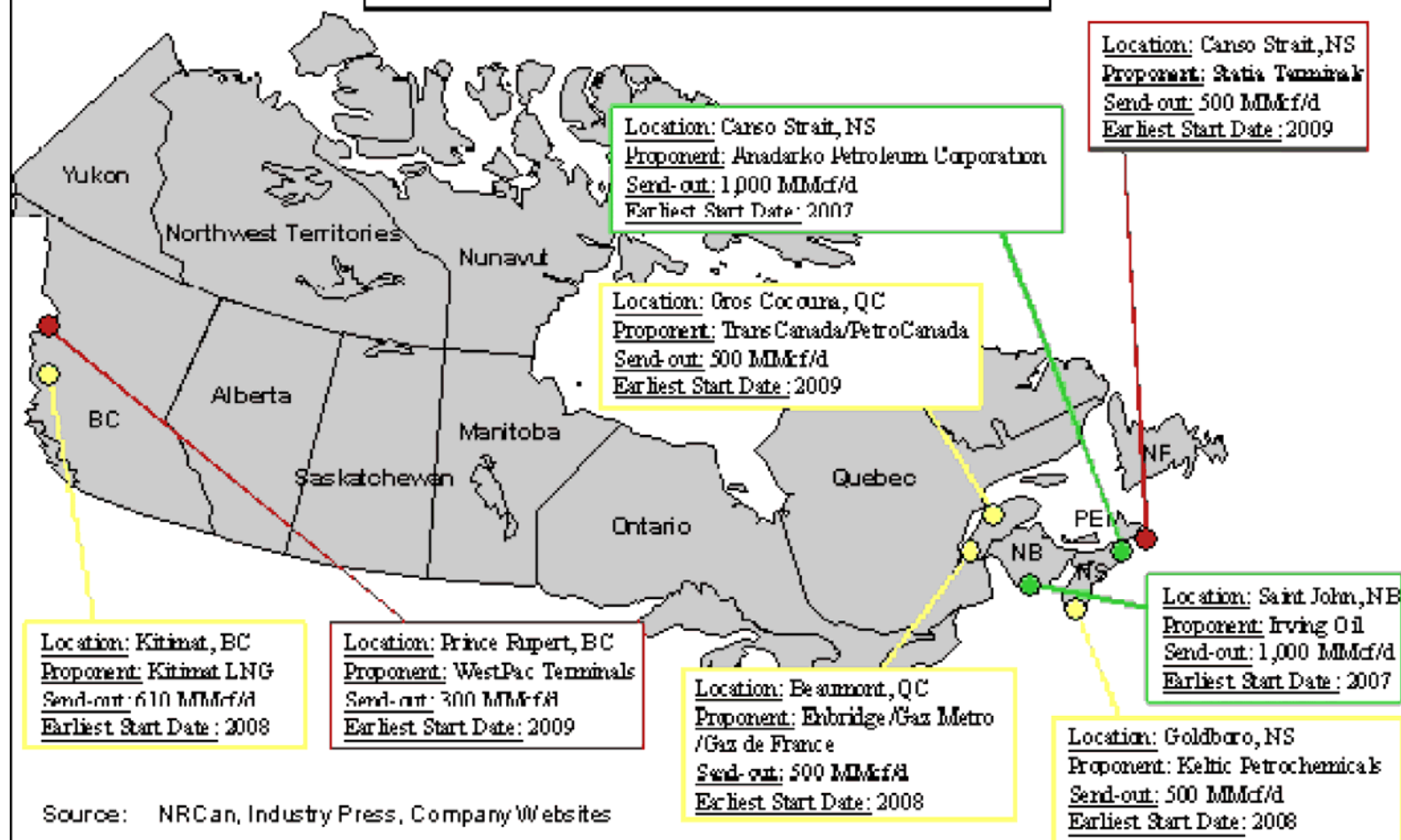
## Purpose

- to overview recent Canadian LNG developments;
- to overview Canadian LNG regulation particularly import/export regulation and access by United States customers to those imported LNG supplies
- high level comparison of Canadian and Mexican import/export regulation affecting exports of re-gasified LNG imports

*This paper does not constitute a legal opinion and should not be relied upon without conferring with counsel. Bennett Jones LLP is not expert in nor is it licenced to provide legal opinions on United States or Mexican trade law.*

## Proposed Canadian LNG Import Terminals

- = Project announced
- = Undergoing federal-provincial EA
- = Received federal-provincial EA approval



## Projects Under Review

Proponent(s) (Name)	Location	Cost (\$CDN)	Send-Out Capacity (Bcf/d)	Earliest Start Date	Status
Anadarko Petroleum Corporation (Bear Head)	Canso Strat, NS	\$400 - 500 million	1.00	2007	Received federal-provincial environmental assessment approval in August 2004.
Irving Oil Limited (Canaport)	Saint John, NB	\$750 million	1.00	2007	Received federal-provincial environmental assessment approval in August 2004.
Enbridge/Gaz Métro/ Gaz de France (Rabaska)	Beaumont, QC	\$700 million	0.50	2008	Undergoing federal-provincial environmental assessment. Process commenced June 2004.
Keltic Petrochemicals	Goldboro, NS	\$4 billion	0.50	2008	Undergoing federal-provincial environmental assessment. Process commenced August 2004.
Kitimat LNG	Kitimat, BC	\$300 million	0.61	2008	Undergoing federal-provincial environmental assessment. Process commenced August 2004.
Trans Canada/Petro-Canada (Cacouna Energy Project)	Gros Cacouna, QC	\$660 million	0.50	2009	Undergoing federal provincial environmental assessment. Process commenced September 2004.
Other Announced Projects					
Westpac Terminals	Prince Rupert, BC	\$200 million	0.30	2009	Project not yet under review.
Statia Terminals	Canso Strat, NS	Unknown	0.50	2009	Project not yet under review.
<b>TOTAL CANADA</b>			<b>4.91</b>		
Sources: NRCan, industry press and company websites. Note: (f) Integrated petroleum refinery and LNG import terminal.					

# Canadian LNG Projects Approved or Under Review

## 1. *Maritimes Canada*

- **Anadarko LNG** (BearHead, Cape Breton, Nova Scotia)
  - terminal approved provincially
  - no provincial toll/access regulation expected
  - federal/provincial environmental assessment
  - Maritimes & Northeast links directly to terminal
- **Canaport LNG** (Irving/Repsol, Saint John, New Brunswick)
  - terminal approved provincially
  - provincial toll/access regulation unknown
  - federal/provincial environmental assessment
  - Maritimes & Northeast likely to link directly to terminal; other provincial connections possible



# Canadian LNG Projects Approved or Under Review (cont'd)

- **Keltic Petrochemicals** (Goldboro, Nova Scotia)
  - terminal and petrochemical complex to be approved provincially
  - provincial toll/access regulation unknown
  - federal/provincial environmental assessment
  - Maritimes & Northeast likely to link directly to terminal; other provincial connections possible
- note similarity between Maritimes Canada region and the Mexican Baja region neither of which are connected to significant gas supplies from other regions of their respective countries
  - potential for challenges arising from serious regional shortfalls

# Canadian LNG Projects Approved or Under Review cont'd

## 2. *Quebec*

- **Rabaska LNG** (Gaz de France, Gaz Metro, Enbridge – Beaumont, Quebec)
  - applied to NEB for approval to construct terminal and connector pipeline federally regulated to TQM Pipeline
  - NEB regulation of toll/access: whether it will be light-handed or conventional regulation is unknown at present
  - federal/provincial environmental assessment
- **Cacouna LNG** (TransCanada, PetroCanada, Russian LNG – Gros Cacouna, Quebec)
  - terminal and long connector pipeline regulated provincially
  - nature of provincial toll/access regulation unknown
  - federal/provincial environmental assessment
  - connects to federally regulated TQM Pipeline



# Canadian LNG Projects Approved or Under Review cont'd

## 3. *British Columbia*

- **Kitimat LNG** (Galveston LNG – Emsley Cove near Kitimat, British Columbia)
  - provincially regulated terminal and short connector pipeline
  - requires major expansion of provincially regulated PNG pipeline to connect to federally regulated Westcoast Transmission system (Duke Energy Gas Transmission)
  - no expansion expected on Westcoast
  - no provincial toll/access regulation of terminal or connector pipeline expected
  - federal/provincial environmental assessment



# Federal Import/Export Regulation

- National Energy Board (NEB) grants licences/orders authorizing:
  - the import of LNG
  - the export of re-gasified natural gas
- the NEB issued draft information requirements for LNG Import Applications in April, 2005
- the NEB's import and export policies are market based
  - Canadians must be permitted to access all energy supplies and to contract for them at fair market prices
  - today, market rations gas exports not regulators
  - export policies, by law, must comply with international agreements

# Canada's International Agreements Affecting Gas Exports

- Free Trade Agreement/ General Agreement on Tariffs and Trade (GATT)
  - North American Free Trade Agreement and Environmental Side Letter
  - Transit Pipeline Treaty
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- long history of border accommodations in areas without access to domestic supplies (Vermont, Montana, areas in the Michigan Upper Peninsula ...)
  - long history of not disrupting existing export arrangements

## Free Trade Agreement (“FTA”)

- effective January 1, 1989; supplements rather than substitutes for existing GATT and International Energy Program (IEP – oil only)
- codified pre-existing Canadian gas export policy
- no export price regulation directly or indirectly (taxes, duties, etc. – Art. 903 and 904)
- supported market-based energy trade and national treatment (Art. 105/501)
- builds on GATT “equitable sharing” obligation (GATT, Art. XX(ii)(a)) by stipulating proportional sharing of shortfalls even where export restrictions permitted
  - government action cannot reduce proportion of supply available to United States below its actual share of Canadian gas supply over past three years. (Art. 904)
- confirmed non-discrimination (Art. 903)
- confirmed continued use of NEB export regulation and surplus test consistent with Art. 902, 903 and 904
- only between Canada and United States
- provides dispute resolution mechanism (Art. 905/Chapter 18)

# North American Free Trade Agreement ("NAFTA")

- enacted five years later January 1, 1994; expands to include Mexico
- supplements rather than substitutes for GATT and FTA principles and affirms market-based energy trade
  - principles of non-discrimination and national treatment (Art. 102/301 and Art. 604); proportionality (Art. 605(a)); eliminates electric minimum pricing test (Art. 608); avoid disruption of contractual relationships (Art. 606 and 609); ensure regulatory measures are consistent with NAFTA (Art. 105)
  - dispute settlement procedures (Chapter 20)
- expands beneficiaries to include Mexico, and other potential signatories though Mexican energy provisions not the same as the FTA
- in a side letter, Canada clarifies that it is not required to export any particular proportion of its gas supplies in times of shortage
  - rather, market will ration the commodity amongst domestic and export buyers
  - United States appears to disagree with Canadian position

## North American Agreement on Environmental Cooperation ("NAAEC")

- The NAAEC is a NAFTA side agreement, and works to promote the effective enforcement of domestic environmental legislation
- It does so by way of non-government and government submissions
- **Non-government** submissions provide a means by which anyone living in any of the three signatory countries may bring facts to light concerning the enforcement of environmental legislation on the books of any of the three countries
- In response to such submissions, the NAAEC may produce a factual record, which provides information regarding enforcement practices that may prove useful to governments, and to the submitters and other members of the interested public.
- **Government** submissions carry more force and can result in the imposition of a monetary penalty or, should the penalty not be paid, the suspension of equivalent benefits.





## Transit Pipeline Treaty

- effective January 28, 1977 between Canada and the United States
- affects all transit movements of hydrocarbons from and to one of the signatories, across the territory of the other
  - agrees not to interfere with oil/gas throughputs
  - agrees not to discriminate with taxes, fees or charges
- for example, applies to Great Lakes Gas Transmission, Lakehead Pipeline; related provisions in *Northern Pipeline Act* for Foothills Pipelines and Alaska Gas under Canada/United States Agreement on Northern Pipelines
- could apply to LNG if exports from Kenai, Alaska were to be delivered to Canadian re-gas terminals and transported across Canada to markets in the United States
- unaffected by FTA and NAFTA

## Mexico

- the Energy Regulatory Commission (“CRE”) maintains jurisdiction over the licencing for transportation of natural gas in Mexico
- monopoly role played by PEMEX
- import/export regulated by federal government the same as Canada
  - information required for approvals from CRE under “*Natural Gas Regulation*” and “*Foreign Trade Law*” similar to what is required by NEB

## Mexico - NAFTA

- preserves basic energy principles in Mexican Constitution, such as the right of Mexico to reserve certain activities to itself
- reservations stipulated in Annex 602.3, include foreign trade is “natural and artificial gas” as well as “goods...obtained from the... processing of... natural gas;”
- Mexico has exercised its reservations with respect to natural gas trade such that while GATT rules continue to apply (Art. 603), the three additional NAFTA protections do not
- accordingly, the proportionality protections to a United States buyer do not appear to apply to Mexican exports though they do for Canadian exports
  - GATT however, does not enable parties to freely restrict exports without regard “equitable sharing of international supply” (GATT, Art. XX(ii)(a))

## Conclusion

- substantial protections for Canada – United States trade in re-gasified natural gas exports from LNG imported to Canadian LNG terminals
  - large scale of overall natural gas trade provides a measure of comfort for proportionality; LNG likely part of total supply under GATT
  - long history of reliable gas trade provides further comfort
- Mexican trade also protected by GATT which NAFTA improves somewhat but not as much as in Canada/ United States energy provisions
  - GATT limits use of export restrictions to temporarily relieve critical shortages of essential supplies; to enforce measures arising from domestic shortages; or other adverse economic conditions
  - scale of natural gas trade much less than between United States and Canada so proportionality may not be able to provide same practical relief or avoid regional disruptions to the same extent as Canada.



- **Questions?**

**Thank You**